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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,776	10/16/2001	Richter A. Rafey	80398.P447	6683

7590 02/25/2005

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EXAMINER
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REID, CHERYL M

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/981,776

Applicant(s)

RAFEY ET AL.

Examiner

Cheryl M. Reid

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 5-14, and 17-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Martino.

#### **Claims 1-3,9,11**

- Martino teaches of providing a usage profile (Col 2, lines 63-67); and refining using at least one of, explicit refinement or implicit refinement to generate a refined profile (Col 4, lines 20-30); wherein the refined profile may be used to control usage of a corresponding device (Col 3, lines 30-40). Martino controls future recordings of device (control usage) based on refined profile; implicit refinement comprises refining the usage profile according to a user's usage patterns of the corresponding device (Col 2, lines 64-67, Col 3, lines 30-40); explicit refinement comprises enabling a user to modify the profile (Col 2, lines 40-45).

**Claims 5- 8, 10**

- Martino teaches of a user generating a user generated profile of user preferences (Col 2, lines 40-45), and implicitly refining the user generated profile based on the user's usage patterns of a corresponding device (Col lines 64-67, Col 3, lines 30-40); storing the refined profile (Col 2, lines 1-5); refining a refined profile by at least one process selected from the group consisting of explicitly refining and implicitly refining (Col 4, lines 10-30) .

**Claims 12-14, 17-18**

- Martino teaches of explicit refinement comprises enabling a user to modify the profile with direct visual feedback (Col 4, lines 19-25); a preference database(memory card or disk) configured to store user preferences with respect to operation of at least one device (Col 7, lines 5-13); an implicit profile developer configured to implicitly generate and refine user preferences based upon a user's usage pattern of the at least one device (Col lines 64-67, Col 3, lines 30-40); and an explicit profile developer configured to enable a user to explicitly modify the user preferences to generate and refine a profile; wherein the refined profile is used in the operation of the at least one device (Col 4, lines 20-30); the apparatus is located one of local to, remote to or within the device (Col 7, lines 5-22); the preferences database (profile which is located in a memory card or disk) comprises specific criteria and a tally of interest for each criterion for at least one

user (Col 4, lines 20-30); the implicit profile developer is an automated system triggered by a user's usage of the at least one device (Fig3, item S20).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martino as applied to claim 1 above, and further in view of Boe.

**Claims 4 and 16**

- Martino does not explicitly teach of explicit refinement comprises displaying using a web-based application to display the profile and enabling the user to modify the profile using the web-based application. Boe teaches on this aspect (Col 1, lines 44-51). Boe's invention relates to profiling customers (Col 1, lines 5-10). Martino leaves room for improvement to his invention by teaching that many substitutions are possible with regards to hardware environment (Col 7, lines 14-15). He also teaches that his invention can use web-based applications (Col 7, lines 30-35). Adding the above mentioned feature to Martino's invention would result in a more versatile system. It is for this reason and reasons discussed above that one of

Art Unit: 2142

ordinary skill in the art at the time of invention would have been motivated to make the above-mentioned modifications.

**Claim 15**

- Martino does not explicitly teach of the apparatus is located remotely at a service provider, the service provider coupled to the device. Boe teaches on this aspect (Col 1, lines 40-50, Col 2, lines 60-67). One of ordinary skill in the art at the time of invention would be motivated to make the above-mentioned modifications for the same reasons discussed above in Claim 4.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl M. Reid whose telephone number is 571 272 3903. The examiner can normally be reached on Mon- Fri (7-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on (571)272-3896. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2142

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cmr

*Jack Han*  
SUPERVISOR  
PATENT EXAMINER